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APR 20

CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 62

JOHN BAIZLEY IRON WORKS and THE OCEAN ACCIDENT & GUARANTY CORPORATION, Limited, Appellants.

v.

ABRAHAM SPAN.

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION ON APPEAL.

OWEN J. ROBERTS,
Counsel for Appellants.

CHARLES A. WOLFE,
ROBERTS & MONTGOMERY,
Of Counsel.

PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928. No. 810.

John Baizley Iron Works and The Ocean Accident & Guaranty Corporation, Limited, Appellants,

v.

Abraham Span.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represent:

A.

STATUTORY PROVISION SUSTAINING JURISDICTION.

The Act of February 13, 1925, Chapter 229, Section 1; 43 Stat. 937 (U. S. Code, Title 28, Section 344)

provides that Section 237 of the Judicial Code is amended to read in part as follows:

> "SECTION 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

B.

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The date of the judgment sought to be reviewed was entered by the Supreme Court of Pennsylvania on the 7th day of January, 1929, (R. 1, 55).[1]

The application for appeal was presented to the Chief Justice of the Supreme Court of Pennsylvania

[1] All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the Supreme Court of Pennsylvania and on file with the Clerk of this Court. The record has not yet been printed.

on the 5th day of March, 1929 (R. 60); and was allowed by the said Chief Justice on the 6th day of March, 1929 (R. 2).

C.

NATURE OF CASE AND RULING BELOW.

The Referee, the Workmens Compensation Board, the Court of Common Pleas of Philadelphia County, the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania have all held that the Workmens Compensation Law of Pennsylvania (Act of June 2, 1915, P. L. 736), as construed by them to be applicable to regulate the rights and remedies of the appellee, a workman injured while engaged in performing repairs in the boiler room on board a steamship lying in navigable waters, did not violate the provisions of the Constitution and laws of the United States, to wit: Article I, Section 8, Clause 3, and Article III, Section 2, Clause 1, of the Constitution of the United States, and the Act of September 24, 1789, Chapter 20, Section 9, 11; 1 Stat. 76, 78, United States Code, Title 28, Section 371, (Judicial Code Section 256).

The principal contention made by the appellants in all of the successive appeals herein was that the said Pennsylvania Workmens Compensation Act as so construed would be repugnant to the Constitution and laws of the United States above referred to. This contention was raised by appellants in the Court of Common Pleas of Philadelphia County (R. 24). The

said court denied this contention and dismissed the appeal (R. 29). The same contention was raised by the appellants in the Superior Court of Pennsylvania (R. 30), and was denied by the said court (R. 31, 32). The same contention was raised by the appellants in the Supreme Court of Pennsylvania (R. 37), and was denied by the said court (R. 53-55).

D.

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Dahnke-Walker Milling Co. *v.* Bondurant, 257 U. S. 282;

United Fuel Gas Co. *v.* Hallanan, 257 U. S. 277;

Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265;

Merchants National Bank of Richmond *v.* Richmond, 256 U. S. 635.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code as amended by the Act of February 13, 1925.

Respectfully submitted,

OWEN J. ROBERTS,

Counsel for Appellants.

CHARLES A. WOLFE,

ROBERTS & MONTGOMERY,

Of Counsel for Appellants.